IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 707 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAVINCHANDRA SHANKARLAL SHAH SHROFF AND COMMISSION AGENT

Versus

STATE OF GUJARAT & ANR

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Appearance :
MR SHAKEEL A QURESHI for Applicant
MS DS PANDIT APP for Respondent No.1
MR RC KAKKAD for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 15/12/2005

ORAL JUDGMENT

1.Heard learned advocate Mr.S.A.Qureshi for the applicant, learned APP Ms.D.S.Pandit for the respondent No.1- State of Gujarat and learned advocate Mr.R.C.Kakkad for the respondent No.2.

2.The present applicant was prosecuted by the learned Judicial Magistrate First Class, (3rd Court) at Vadodara in Criminal Case No.792 of 2001 for the offence punishable under Section 138 of the Negotiable Instruments Act. The present respondent No.2 preferred the complaint before the learned Magistrate and after recording the evidence and hearing of the parties, vide judgment and order dated 25th July, 2003, learned Magistrate found present applicant guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and he was sentenced to undergo simple imprisonment of eight months and was directed to pay compensation of Rs.18,00,000/- in

pursuance of Section 357(3) of the Code of Criminal Procedure Code. It was the case of the complainant that the accused issued two cheques to the complainant, one of Rs.16,58,267/- and other of Rs.2,27,614/-. It was the case of the complainant that the accused – applicant being shroff, the complainant deposited the amount with the accused for interest and for which these two cheques, one for capital and other for interest, were issued by the accused. On bouncing the cheques, the complaint came to be preferred, as aforesaid resulting in conviction of the present applicant.

3.The present applicant also preferred Criminal Appeal No.34 of 2003 in the Court of Sessions at Vadodara against the judgment and order delivered by the learned Magistrate convicting the present applicant. The said appeal was heard and came to be dismissed by the learned Additional Sessions Judge, Vadodara vide his judgment and order dated 29th July, 2005 and

hence, this Revision Application.

4. Learned advocate for the applicant did not assail both the decisions of the Courts below on merits, but submitted that regarding the peculiar facts of the case, the quantum of sentence, so far as imprisonment is concerned, is required to be reduced. It is submitted that it is revealed during the trial that the complainant and her husband and the accused were in business relationship to the extent that they both were partners of a firm. The applicant is aged about 57-58 years and shoulders liability of his family consisting of wife and two sons. It was contended that there are no other criminal antecedents of the applicant, except some transactions, with the complainant purely a business transaction resulting in trial and conviction. It was contended that except this complaint, other four complaints are filed by the complainant and her husband in which the applicant is

convicted and is undergoing sentence. It was contended that therefore, due to financial restrains and crunches and on account of business being disturbed, the applicant was unable to make payments of the cheques issued. It is contended that after filing the Revision Application, the applicant has shown his willingness to make the payment to his ability to pay and has paid an amount of Rs.1,00,000/- to the complainant. The applicant has deposited an amount of Rs.2,50,000/- in the Court of Sessions at Vadodara in pursuance of the order passed in Criminal Appeal No.34 of 2003. The applicant has deposited further amount of Rs.1,00,000/- before the trial Court in pursuance of the order passed by this Court in this Revision Application. In all, according to the learned advocate for the applicant, Rs.1,00,000/- has been paid to the complainant, while an amount of Rs.3,50,000/- are deposited in the trial Court and in the Sessions Court at

Vadodara, totaling Rs.4,50,000/-. It was contended that the amount of Rs.3,50,000/- deposited in the trial Court as well as in the Sessions Court at Vadodara, may be allowed to withdrawn by the complainant towards the amount of compensation as awarded by both the Courts below. In these circumstances, it was contended that the quantum of sentence of imprisonment be reduced to reasonable extent. Reliance was placed upon a decision of the Apex Court in the matter of **HARBANS SINGH Vs. STATE OF DELHI AND ANOTHER**, as reported in **(2002) 10 SCC 538** wherein, in a Criminal Appeal against the conviction of Negotiable Instruments Act under Section 138, when amount of cheque was tendered by the accused, the Apex Court was pleased to reduce the sentence.

5.On the other hand, learned advocate for the respondent No.2 relying upon the decision of this Court in Criminal Revision Application No.883 of 2005 decided on 13th July, 2005 in the

matter of **BHIKHABHAI PRAGJIBHAI PRAJAPATI Vs. STATE OF GUJARAT**, stated that there is little scope of interference by the High Court, when there is concurrent findings of both the Courts below. It was submitted that the accused was shroff and as such, the amount was deposited with him with intention to earn interest and when the amount was not repaid, these two cheques for the capital amount as well as for the interest were issued. It was submitted that this is a case for enhancement of sentence.

6. Having heard learned counsels for the parties and having gone through the record, only submission made as to the reduction of the sentence is required to be considered. The object and purpose for inserting provisions like Section 138 of the Negotiable Instruments Act is obvious that to inculcate faith of the people in the business transaction. Some transactions which are purely of civil nature are made offence. Taking this fact into

consideration as well as the facts of the case, so far as, it relates to the circumstances for reduction of sentence, the request made on behalf of the applicant is required to be considered. The amount of cheque issued was to the tune of Rs.18,00,000/-, the applicant was directed to deposit at least amount of Rs.9,50,000/- before the trial Court vide orders of this Court dated 6th September, 2005 and, thereafter, 20th September, 2005. However, it appears that the applicant could deposit an amount of Rs.1,00,000/- only as against Rs.9,50,000/-. Considering the grounds and circumstances as contended on behalf of the applicant as well as considering the fact that the applicant may be in real financial crunch, granting permission to the complainant i.e. respondent No.2 to withdraw the amount deposited by the applicant and credit the same towards the compensation awarded by the learned Magistrate, the sentence of imprisonment

awarded to the applicant is required to be reduced to reasonable extent.

7. In view of the above, the quantum of sentence of simple imprisonment awarded by the learned Judicial Magistrate First Class (3rd Court) at Vadodara of eight months is reduced to simple imprisonment of four months. The remaining judgment and order of learned Judicial Magistrate First Class (3rd Court) at Vadodara as confirmed by the learned Additional Sessions Judge, Vadodara, is not interfered with. The respondent No.2 herein i.e. original complainant is permitted to withdraw the amount of Rs.2,50,000/- deposited by the applicant in the Court of Sessions at Vadodara as well as the amount of Rs.1,00,000/- deposited by the applicant in the trial Court in pursuance of the order passed by this Court in this Revision Application. The complainant shall give credit of total amount of Rs.4,50,000/- towards the compensation awarded and the complainant will

be at liberty to take legal course to recover remaining amount whatsoever of compensation.

8. The applicant was released on bail during the pendency of this Criminal Revision Application vide order dated 6th September, 2005. Since this Criminal Revision Application is disposed of, as aforesaid, bail bonds submitted by the applicant stands cancelled and learned Magistrate may take necessary action to serve the sentence upon the applicant, as aforesaid.

9. This Criminal Revision Application, thus, stands disposed of with the aforesaid order of reduction of sentence of simple imprisonment. Rule is made absolute to the above extent. Direct service is permitted.

[J. R. VORA,J.]

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